



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

May 1, 2007

The Honorable Martha Fuller Clark, Chairperson
Energy, Environment and Economic Development Committee
Legislative Office Building, Room 102
Concord, New Hampshire 03301

Re: HB 665-FN, relative to modifying the applicability of the Comprehensive Shoreland Protection Act

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 665-FN which would modify RSA 483-B, the Comprehensive Shoreland Protection Act (CSPA) to extend coverage of the CSPA to third order streams, include two statutorily exempted designated rivers and to clarify the definition of water dependent structures. In addition HB 665-FN repeals RSA 483-B:19, which allows municipalities to seek full exemption from the CSPA. The Department of Environmental Services (DES) strongly supports this legislation. However, we recommend that one provision, included in the original language of HB 665, that would amend DES authority to permit public infrastructure be added back into the legislation. We understand that this language was inadvertently left out of the amended version of the bill. We also have a concern with our ability to implement the proposed changes with existing staff. This concern is resolved if HB 663-FN, as amended by the House, becomes law thus providing DES with additional resources for implementation of the CSPA.

In 2005, the Legislature established the CSPA Commission to review the effectiveness of the CSPA by passage of Senate Bill 83. In 2006, after 13 months of review, the CSPA Commission filed a final report outlining its conclusions, as well as 17 recommendations for improving the effectiveness of the CSPA. This legislation would enact several of those recommendations. DES supports the proposed changes as discussed below:

- The use of the New Hampshire Hydrologic Database for stream classification, as it is a more accurate methodology of comparing streams. However, the language as proposed still contains references to the previous methodology, which could lead to confusion.
- The inclusion of third order streams, as it is beneficial to water quality to increase the scope of the CSPA. However, without funding for staff and resources, the Department will not be able to implement the program's expanded jurisdiction.
- The inclusion of the Saco and Pemigewasset Rivers under the jurisdiction of the CSPA. Please note that, since all designated rivers would then be included under the CSPA, the statutory language would be clearer if RSA 483-B:20 were simply repealed.
- The proposed clarification of the water dependent structure definition. In accordance

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

with the current language of RSA 483-B:6, Prior Approval: Permits, anyone wishing to "construct a water dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A." There are currently two different definitions of water dependent structure found in the CSPA. The intention of the original definition was to identify those structures which were located within the bounds of surface waters that would require a permit under RSA 482-A. The definition found in RSA 483-B:4, XXVI, added in 2002, defined the structures by use. This created confusion as to whether certain structures outside the wetlands jurisdiction, as defined by RSA 482-A, would require a wetlands permit. By revising the definition found in RSA 483-B:4, XXVI the bill would clarify that the intent of RSA 483-B:6 is to require a permit from the Wetland Bureau only for those impacts which occur within the jurisdiction of the Wetlands Bureau as defined in RSA 482-A.

- The repeal of RSA 483-B:19. The authority for municipalities to adopt their own shoreland ordinances and enforce the CSPA is granted through RSA 483-B:8, Municipalities. RSA 483-B:19 allows towns to seek exemptions from the CSPA by having their local ordinances certified by the Office of Energy and Planning as being at least as stringent as the CSPA. Only one town has had its local ordinance certified under this provision. Other towns which have inquired about the certification have opted not to certify due to the fact that, once a Town is exempt from the CSPA, the state can not offer any enforcement support. Shorefront owners frequently read RSA 483-B:19, incorrectly assume that their local ordinances have been certified, and then inadvertently violate the CSPA.

HB 665 originally included the following language that was recommended by the CSPA Commission in its final report:

"Amend RSA 483-B:9, IV-b to read as follows: IV-b. Public utility lines and associated structures and facilities, *public roads, and public access facilities including boat ramps* shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law."

The current language of the CSPA results in unintended delays and restrictions on projects with public benefit that this proposed amendment would resolve. Therefore, we recommend that this proposed language be added back into the bill.

Thank you again for this opportunity to comment on this bill. Please feel free to call me at 271-3503, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

cc: Representatives Spang, Weed, Foose
Senators Fuller Clark and Sen. DeVries